

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.

SEP 19 2011

ENTERED DIRECTOR'S JOURNAL

In the Matter Of:

Board of Directors  
Lorain County  
Solid Waste Management District  
226 Middle Ave  
Elyria Ohio 44035

Respondent

Director's Final Findings  
and Orders

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to the Board of Directors of the Lorain County Solid Waste Management District ("Respondent") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency under Ohio Revised Code ("ORC") Sections 3734.13 and 3745.01.

II. PARTIES BOUND

These Orders shall apply to and be binding upon Respondent and its successors in interest liable under Ohio law.

III. DEFINITIONS

Unless otherwise stated, all terms used in these Orders shall have the same meaning as defined in ORC Chapter 3734. and the rules promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA makes the following findings:

1. In accordance with ORC Section 3734.52, the board of county commissioners of Lorain County (the "County Commissioners") was required to establish a solid waste management district no later than March 24, 1989.
2. On March 21, 1989, the County Commissioners established the Lorain Solid Waste Management District (the "District"). The County Commissioners function

as the Board of Directors of that District.

3. ORC Section 3734.57 establishes procedures for a solid waste management district to levy, amend, and repeal solid waste management district disposal fees ("disposal fees").
4. In accordance with ORC Section 3734.57, the District established a disposal fee structure of \$2.00 per ton for in-district waste; \$4.00 per ton for out-of-district waste; and \$2.00 per ton for out-of-state waste, effective January 1, 1994.
5. On December 4, 2007, Ohio EPA approved the District's most recent solid waste management plan that had been ratified locally and submitted to Ohio EPA for approval in accordance with ORC Section 3734.56 ("Currently Effective Plan"). The Currently Effective Plan contains the same \$2.00/\$4.00/\$2.00 fee structure that became effective on January 1, 1994.
6. On April 21, 2010, the Board of Directors on behalf of the District entered into a contract (identified as a "Designation and Host Community Agreement") with Lorain County Landfill LLC ("Contract"). Among other things, the Contract contained provisions that in exchange for services detailed in the designation agreement, paid back to Lorain County Landfill, LLC \$1.40 from the \$4.00 per ton out-of-district fee. The Contract had the effect of lowering the out-of-district disposal fee from \$4.00 per ton to \$2.60 per ton.
7. In correspondence dated March 1, 2011, April 1, 2011, and April 13, 2011, the County Administrator indicated that one of the purposes of entering into the Contract was to adjust and lower the out-of-district disposal fee, which would be done without following the procedures set forth in R.C. 3734.57 for amending fees levied under that statute. The March 1, 2001, letter, for example, indicated that "...enacting the contract eliminated the lengthy and timely process to adjust the [out-of-district disposal] fees."
8. The District amended the out-of-district disposal fee established under ORC Section 3734.57(B) without following the procedures set forth in that division for amending fees.
9. ORC Section 3734.57(G) specifies that solid waste management district fees levied under ORC Section 3734.57(B) ". . . shall be expended by the board of county commissioners or directors of the district in accordance with the district's solid waste management plan or amended plan approved under section . . . 3734.56 of the Revised Code. . . ."
10. The Currently Effective Plan contains a program called "Host Community Agreement." The Currently Effective Plan specifies \$0 of annual expenditures for that program throughout the length of the Plan.

11. As of July 7, 2011, the District reported \$1,004,971.21 of expenditures under "Other Services Contracts" on quarterly fee reports submitted to Ohio EPA. The District has indicated that some or all of these expenditures are associated with the "Designation and Host Community Agreement".
12. The expenditure of \$1,004,971.21, as reported to Ohio EPA, is a material expenditure of fees levied under ORC 3734.57(B) that was not expressly authorized under the Currently Effective Plan. Therefore, the District has spent solid waste management district disposal fees in violation with ORC Section 3734.57(G).
13. Respondent does not admit its actions were in violation of ORC Section 3734.57(G), and believed that its actions were in compliance with the law.

#### **V. ORDERS**

1. Upon the effective date of these Orders, the District shall comply with the requirements of ORC Section 3734.57(B) if it desires to amend the District disposal fees levied under ORC Section 3734.57(B).
2. Upon the effective date of these Orders, the District shall cease all material expenditures which utilize fees levied under ORC Section 3734.57(B) that are not expressly authorized by the Currently Effective Plan for so long as that Plan is in effect.
3. No later than 30 days after the effective date of these Orders, the District shall provide documentation to Ohio EPA which demonstrates how the District has returned to compliance with applicable law regarding the violations identified in these Orders.

#### **VI. TERMINATION**

Respondent's obligations under these Orders shall terminate when Respondent certifies in writing and demonstrates to the satisfaction of Ohio EPA that Respondent has performed all obligations under these Orders and the Chief of Ohio EPA's Division of Materials and Waste Management acknowledges, in writing, the termination of these Orders. If Ohio EPA does not agree that all obligations have been performed, then Ohio EPA will notify Respondent of the obligations that have not been performed, in which case Respondent shall have an opportunity to address any such deficiencies and seek termination as described above.

The certification shall contain the following attestation: "We certify that the information contained in or accompanying this certification is true, accurate and complete." This

certification shall be submitted by Respondent to Ohio EPA and shall be signed by the County Commissioners of Lorain County.

#### **VII. OTHER CLAIMS**

Nothing in these Orders shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership or corporation, not a party to these Orders, for any liability arising from, or related to these Orders.

#### **VIII. OTHER APPLICABLE LAWS**

All actions required to be taken pursuant to these Orders shall be undertaken in accordance with the requirements of all applicable local, state, and federal laws and regulations. These Orders do not waive or compromise the applicability and enforcement of any other statutes or regulations applicable to Respondent.

Except as expressly provided herein, these Orders are not, and shall not be construed to be, a permit, exemption or variance issued pursuant to any statute or rule.

#### **IX. MODIFICATIONS**

These Orders may be modified by agreement of the parties hereto. Modifications shall be in writing and shall be effective on the date entered in the journal of the Director of Ohio EPA.

#### **X. NOTICE**

All documents required to be submitted by Respondent pursuant to these Orders shall be addressed to:

Ohio Environmental Protection Agency  
Central Office  
Division of Materials and Waste Management  
Attn: SWMD Supervisor  
PO Box 1049  
Columbus, Ohio 43216-1049

and/or to such persons and addresses as may hereafter be otherwise specified in writing by Ohio EPA.

#### **XI. RESERVATION OF RIGHTS**

Ohio EPA and Respondent each reserve all rights, privileges and causes of action, except as specifically waived in Section XII. of these Orders. Ohio EPA expressly reserves all rights, privileges and causes of action related to any expenditures made by the District under the Contract that were not part of the Currently Effective Plan or were otherwise made in violation of applicable law.

#### **XII. WAIVER**

Respondent consents to the issuance of these Orders and agrees to comply with these Orders. Respondent hereby waives the right to appeal the issuance, terms and conditions, and service of these Orders, and Respondent hereby waives any and all rights Respondent may have to seek administrative or judicial review of these Orders either in law or equity.

Notwithstanding the preceding, Ohio EPA and Respondent agree that if these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, Respondent retains the right to intervene and participate in such appeal. In such an event, Respondent shall continue to comply with these Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated, or modified.

#### **XIII. EFFECTIVE DATE**

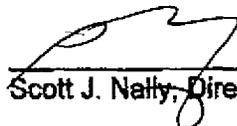
The effective date of the Orders is the date these Orders are entered into the Ohio EPA Director's Journal.

#### **XIV. SIGNATORY AUTHORITY**

Each undersigned representative of a party to these Orders certifies that he or she is fully authorized to enter into these Orders and to legally bind such party to these Orders.

**ORDERED AND AGREED:**

**Ohio Environmental Protection Agency**

  
\_\_\_\_\_  
Scott J. Nally, Director

**AGREED:**

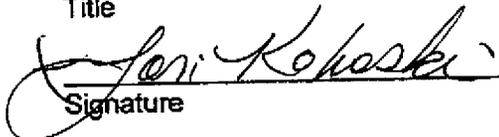
**Lorain County Solid Waste Management District**

  
Signature

Date September 1, 2011

Ted Kalo  
Printed or Typed Name

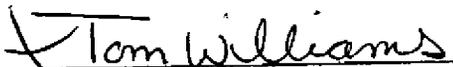
Commissioner  
Title

  
Signature

Date September 1, 2011

Lori Kokoski  
Printed or Typed Name

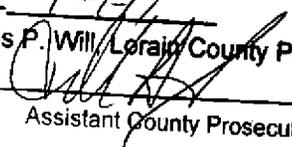
Commissioner  
Title

  
Signature

Date September 1, 2011

Tom Williams  
Printed or Typed Name

Commissioner  
Title

APPROVED AS TO FORM  
DATE 9-1-11  
Dennis P. Will, Lorain County Prosecutor  
By:   
Assistant County Prosecutor